

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

LESLIE HILL

APPELLANT,

**v.
GOVERNMENT EMPLOYEE
INSURANCE COMPANY**

RESPONDENT.

DOCKET NUMBER WD74985

DATE: November 20, 2012

Appeal From:

Jackson County Circuit Court
The Honorable Charles H. McKenzie, Judge

Appellate Judges:

Division One: Thomas H. Newton, Presiding Judge, Joseph M. Ellis, Judge and Gary D. Witt,
Judge

Attorneys:

Stephen R. Bough and M. Blake Heath, Kansas City, MO, for appellant.

Scott D. Hofer and James P. Maloney, Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

LESLIE HILL,

APPELLANT,

v.

**GOVERNMENT EMPLOYEE
INSURANCE COMPANY,**

RESPONDENT.

No. WD74985

Jackson County

Before Division One: Thomas H. Newton, Presiding Judge, Joseph M. Ellis, Judge and Gary D. Witt, Judge

Leslie Hill was injured when a Dodge Ram driven by Matthew Malone and owned by his father, Phillip Malone, struck her car from behind. Matthew was intoxicated at the time of the collision. Matthew was insured under Phillip's policy. Hill sued Matthew for negligent operation of the truck and settled with him for \$100,000, the limits of the Malone policy. Hill subsequently sued Phillip for negligent entrustment. Because the limits of the Malone policy were expended due to Hill's settlement with Matthew, there were no funds remaining under the policy limits with which to indemnify Phillip. Although Hill's claim against Phillip was covered under his policy, and his insurer provided counsel to represent him, Phillip was not indemnified against Hill's tort claim because his policy limit had been reached in settling Hill's claim against Matthew. Characterizing Phillip as now uninsured due to the lack of indemnification, Hill attempted to collect uninsured motorist coverage under her policy with Government Employee Insurance Company ("Government Employee"). Government Employee denied Hill's claim because Malone was not considered an uninsured motorist under the terms of Hill's policy. Hill then sued Government Employee for vexatious refusal to pay. The Circuit Court of Jackson County granted summary judgment to Government Employee, finding that there was no disputed issue of material fact under the contract terms of Hill's policy. Hill appeals.

AFFIRMED.

Division One holds: The trial court did not err in granting summary judgment to Government Employee because (1) the issue of whether the lack of indemnification due to the exhaustion of policy limits converted Phillip into an uninsured motorist was not a factual issue for the jury; rather, it was a settled issue under contract law which governs the duty of insurers; (2) the fact that the limits of Phillip's policy were expended and no funds remained to indemnify him did not convert his status to that of an uninsured motorist; rather, he remained insured since a liability policy covering Phillip as the owner of the vehicle was in effect at the time of the accident and met the statutory minimum requirements in coverage; and (3) the tort of negligent entrustment was a claim covered by the liability policy in effect, even though the policy limits

had been expended, such that Phillip was not an uninsured tort-feasor. Thus, Hill was not entitled to uninsured motorist benefits from Government Employee, making summary judgment appropriate.

Opinion by Gary D. Witt, Judge

November 20, 2012

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